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Attorneys for Plaintiffs and the Putative Classes

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

ADAM KILKER and BRANDON FISHER on
behalf of themselves and all others similarly
situated,

Plaintiffs,

v.

APPLE INC., a California corporation,

Defendant.

Case No.

CV 13 3775

CLASS ACTION COMPLAINT

JURY TRIAL DEMANDED

1 Plaintiffs ("Plaintiffs"), on behalf of themselves and all other similarly situated persons, by and
2 through their undersigned counsel, allege upon personal knowledge as to themselves and upon
3 information and belief as to other matters (which is based on, among other things, their experiences at
4 Defendant's stores, review of Defendant's records, conversations with Defendant's employees and
5 investigation of their counsel), as follows:

6 **NATURE OF ACTION**

7 1. Plaintiffs bring this action on behalf of themselves and all other similarly situated
8 current and former hourly paid and non-exempt Genius Bar Employees ("Geniuses"), Specialists,
9 Lead Specialists and Expert Specialists ("Specialists") and Managers, Senior Managers,
10 Developmental Managers and Business Managers ("Managers," and, together with Specialists, "Apple
11 Hourly Employees") of Defendant Apple Inc. ("Apple" or "Defendant"). The Defendant in this
12 action, by virtue of its management and control over the wages and work of Apple Hourly Employees,
13 is an "employer" under applicable labor law.

14 2. Apple operates as one of the world's largest global technology companies which
15 designs, manufactures and markets mobile communication and media devices, personal computers,
16 and portable digital music players, and sells a variety of related software, services, peripherals,
17 networking solutions, and third-party digital content and applications. Apple has a presence and retail
18 stores in 13 countries, including a permanent presence in California, and employs approximately
19 72,800 people, 42,400 of who work in Apple's retail segment.

20 3. A Genius's duties include addressing various hardware and software issues with Apple
21 products. A Specialist's duties include customer support relating to retail sales of Apple products and
22 accessories. Specialists are also required to have knowledge of and be able to perform light diagnostic
23 checks on Apple hardware and software. A Manager's duties include overseeing the Specialists and
24 tending to customer-related needs. Managers are non-exempt hourly paid employees who are entitled
25 to overtime compensation.

26 4. As particularized below, Apple has engaged and continues to engage in illegal and
27 improper wage practices that have deprived Apple Hourly Employees throughout the United States of
28 millions of dollars in wages and overtime compensation. These practices include requiring Apple

Hourly Employees to wait in line and undergo two off-the-clock security bag searches and clearance checks when they leave for their meal breaks and after they have clocked out at the end of their shifts. These “personal package and bag searches” are done for the sole benefit of Apple; are a uniform practice and policy in all Apple retail stores nationwide; and are not imposed on Apple’s customers. This illegal practice and policy has been known to the Defendant for years and Apple continues to require Apple Hourly Employees to endure these required but uncompensated security checks. For these reasons, Plaintiffs bring this action on behalf of themselves and other Apple Hourly Employees to recover unpaid wages, overtime compensation, penalties, interest, injunctive relief, damages and reasonable attorneys’ fees and costs under, among other statutes, the Fair Labor Standards Act (the “FLSA”) §§ 201 *et. seq.*, Mass Gen. Laws Ch. 151 §§ 1A and 1B, and Ohio Revised Code §§ 4111 *et seq.*

JURISDICTION AND VENUE

5. This Court has original jurisdiction pursuant to 28 U.S.C. § 1331 because the action involves a federal statute, the FLSA, 29 U.S.C. §216(b).

6. This Court has original jurisdiction over all claims in this action under the Class Action Fairness Act (“CAFA”) 28 U.S.C. 1332(d). This is a proposed class action in which: (a) there are 100 or more members in each proposed class; (b) at least some members of each proposed class have a different citizenship from the Defendant; and (c) the claims of the proposed class members exceed \$5,000,000.00 in the aggregate.

7. This Court has supplemental jurisdiction under 28 U.S.C. § 1367 over the state law wage and hour claims because those claims derive from a common nucleus of operative fact.

8. Venue is proper in the Northern District of California pursuant to 28 U.S.C. § 1391(b)(1) and (2) because the Defendant is headquartered in this judicial district and a substantial part of the events giving rise to the claims asserted herein occurred in this judicial district.

INTRADISTRICT ASSIGNMENT

9. This matter is properly assigned to the San Francisco Division of this District pursuant to Civil Local Rule 3-2(c) because Defendant maintains numerous retail stores within the counties comprising the San Francisco Division and employs numerous hourly non-exempt employees at those

1 locations, who, on information and belief, were subjected to Defendant's mandatory personal package
2 and bag search policy challenged by this action. As stated in Defendant's written rules, the mandatory
3 personal package and bag search policy "appl[ies] to all employees of Apple Inc. and participating
4 subsidiaries in the United States." See Apple Employee Policies. Therefore, a substantial part of the
5 events or omissions that give rise to the claims occurred within this Division within the meaning of
6 Civil Local Rule 3-2(c).

7 THE PARTIES

8 Plaintiffs

9 Adam Kilker

10 10. Plaintiff, Adam Kilker, is a resident of Milford, Massachusetts. Mr. Kilker was
11 employed by Apple on a part-time basis as a Specialist at the CambridgeSide Galleria retail store in
12 Cambridge, Massachusetts from October 20, 2007 until August 15 2012 and at the Natick Collection
13 retail store in Natick, Massachusetts from September 1, 2012 until May 27, 2013. Mr. Kilker was paid
14 an hourly rate of between approximately \$14.00 -- \$18.30. Throughout Mr. Kilker's employment at
15 Apple, he was required to undergo personal package and bag searches before he was permitted to
16 leave the store for his uncompensated meal breaks and before he was permitted to leave the store after
17 he had clocked out at the end of his shifts. These security checks were significant, integral,
18 indispensable, not a de minimis task or request and done solely for Apple's benefit to prevent
19 employee pilferage. By way of example, during any week of his employment from 2007 through
20 2013, Mr. Kilker waited in line to undergo a "personal package and bag search" for at least 5-10
21 minutes without compensation prior to leaving for all of his uncompensated meal breaks and for at
22 least 5-10 minutes prior to leaving at the end of all of his shift once he had already clocked out. As a
23 specific example, Mr. Kilker was required to wait in line for off-the-clock security checks before
24 leaving for his meal break and at the end of his shift for 10-20 minutes every day during the week of
25 February 2, 2013 to February 8, 2013. However, because of Defendant's improper uncompensated
26 security check policies as described more fully below, Mr. Kilker was deprived of wages as required
27 by the FLSA and Mass. Gen. Law. During any given week, Mr. Kilker worked approximately 50
28 minutes to 1.5 hours of uncompensated straight-time and overtime. By conservative calculations, this

1 equated over the course of one year to an aggregate amount of approximately \$850.00 in
2 uncompensated hours worked and overtime.

3 **Brandon Fisher**

4 11. Plaintiff, Brandon Fisher, is a resident of Nashville, Tennessee. Mr. Fisher was
5 employed by Apple on a full-time basis as a Specialist at Apple's Easton Towne Center retail store in
6 Columbus, Ohio from March 2010 until November 2011, and at Apple's Greenhills retail store in
7 Nashville, Tennessee from November 2011 until June 2012. Mr. Fisher was paid an hourly rate of
8 approximately \$14.00. Throughout Mr. Fisher's employment at Apple, he was required to undergo
9 personal package and bag searches before he was permitted to leave the store for his uncompensated
10 meal break and before he was permitted to leave the store after he had clocked out at the end of his
11 shift. These security checks were significant, integral, indispensable, not a de minimis task or request
12 and done solely for Apple's benefit to prevent employee pilferage. By way of example, during any
13 week of his employment from 2010 through 2012, Mr. Fisher waited in line to undergo a "personal
14 package and bag search" for at least 10-15 minutes without compensation prior to leaving for all of his
15 uncompensated meal breaks and for at least 10-15 minutes prior to leaving at the end of all of his shift
16 once he had already clocked out. As a specific example, Mr. Fisher was required to wait in line for
17 off the clock security checks before leaving for his meal break and at the end of his shift for 20-30
18 minutes every day during the week of December 19, 2011 to December 25, 2011. However, because
19 of Defendant's improper uncompensated security check policies as described more fully below, Mr.
20 Fisher was deprived of wages as required by the FLSA and NYLL. During any given week, Mr.
21 Fisher worked approximately 1 hour to 1.5 hours of uncompensated overtime. By conservative
22 calculations, this equated over the course of one year to an aggregate amount of approximately \$1,000
23 in uncompensated hours worked and overtime.

24 **Defendant**

25 12. Apple is a publically traded company which conducts business throughout the United
26 States and abroad. It was established and incorporated under the laws of California and has its
27 principal headquarters in California.

28 13. Apple designs, manufactures and markets mobile communication and media devices,

1 personal computers, and portable digital music players, and sells a variety of related software,
2 services, peripherals, networking solutions, and third-party digital content and applications. Apple
3 employs approximately 72,800 people, 42,400 of whom work in Apple's retail segment. Additionally,
4 Apple operates out of 13 countries, has approximately 390 retail stores and generated net sales of
5 \$156.5 billion in 2012.

6 14. The wages and hours and all of Defendant's related employee compensation policies
7 are and were centrally and collectively dictated, controlled, and ratified. As such, Defendant had the
8 power to control the wage policies and practices described herein through its oversight of day-to-day
9 operating procedures, control over employee work schedules, ability to determine employees' rate of
10 pay, and ability to control Apple's record keeping practices. As such, Defendant is the "employer" –
11 single, joint or otherwise – of Plaintiffs and other members of the proposed classes described below.

12 FACTUAL ALLEGATIONS

13 Background

14 15. Apple has thousands of hourly paid non-exempt Geniuses, Specialists and Managers.
15 Each Genius, Specialist and Manager is employed at a specific Apple retail store.

16 16. Each Apple retail store has numerous managers who are responsible for overseeing the
17 Geniuses and Specialists and assigning daily tasks. These Managers, who are hourly paid, non-exempt
18 employees, are subject to the same "personal package and bag searches" as those conducted upon
19 Geniuses and Specialists and are members of the putative class that Plaintiffs seek to represent.
20 However, Supervisors and others with executive positions who are paid fixed salaries are not members
21 of the classes that Plaintiffs seek to represent in this action.

22 17. Apple hired Plaintiffs and promised to pay hourly wages for their work. On average,
23 full-time Geniuses, Specialists and Managers are paid between minimum wage and \$30.00 per hour
24 and have a standard work week of 40 hours. Moreover, each full-time employee is entitled to a daily
25 unpaid meal break of one hour.

26 18. Apple Hourly Employees are required to clock in when they arrive at work, clock out
27 when they go on a meal break, clock in when they return from a meal break and clock out when they
28

1 leave for the day. The time-keeping system and the procedures for using it are the same at each Apple
2 retail store. In this regard, Apple uses time tracking software developed by Kronos Inc. The software
3 requires Apple Hourly Employees to enter a username and password to clock in and clock out each
4 day.

5 **Apple's Personal Package and Bag Check Policy Deprives Employees of Compensation When**
6 **They Perform Services For The Defendant's Benefit**

7 19. Pursuant to a uniform nationwide policy originated by Apple, "[a]ll employees,
8 including managers and Market Support employees, are subject to personal package and bag
9 searches." See Apple Employee Conduct Manual. If an Apple Hourly Employee refuses to submit to
10 this security screening or deviated from the corporate policy in any way, it "could result in
11 disciplinary action, up to and including termination." See Apple Employee Policies. Apple Hourly
12 Employees were and are required to wait in line and be searched for potential or possible store items
13 or merchandise taken without permission and/or other contraband. Thus, at the discretion and control
14 of the Defendant and solely for its benefit, Plaintiffs and other Apple Hourly Employees were and are
15 required to wait in line for security checks for at least 10–15 minutes each day before leaving for their
16 meal break and at the end of their shift after they had already clocked out. This daily 10–15 minute
17 uncompensated waiting time during security checks was done in order to undergo searches for
18 possible contraband and/or pilferage of inventory. This security screening includes the inspection of
19 employee bags and other personal containers as well as checking employee "Personal Technology
20 Cards" which list each employees' personal Apple devices and serial numbers so they can be checked
21 against what devices the employee has on their person or in their belongings prior to exiting the store.
22 Because such screening is designed to prevent and deter employee theft, a concern that stems from the
23 nature of the employee's work (specifically, their access to high value electronics and merchandise),
24 the security checks and consequential wait time are necessary to the employee's primary work as retail
25 employees and done solely for Apple's benefit.

26 20. A large number of Specialists and Managers leave for lunch at the same time and/or
27 end their shift at the same time. This creates lengthy lines and backups for managers, members of the
28 security team and others authorized to conduct security screenings who are often times engaged in
other job related duties. As a result, Apple Hourly Employees are forced to wait in these lines and

1 undergo lengthy off-the-clock security screenings before they are allowed to leave the premises. This
2 work, done primarily for the employer's benefit, is time which Apple Hourly Employees should be,
3 but are not compensated for, both straight hours and overtime hours worked in excess of 40 in a week
4 or, in California, in excess of 8 in a day.

5 21. Apple's corporate employee conduct policy mandates and requires that Specialists
6 "[f]ind a Manager or member of the security team (where applicable) to search [their] bags and
7 packages before [they] left the store." *See* Apple Employee Conduct Manual. Additionally, the policy
8 forbids Specialists and Managers from leaving the store "prior to having [their] personal package or
9 bag searched by a member of management or the security team (where applicable)." *Id.* Furthermore,
10 these policies are uniform throughout every Apple retail store and "apply to all employees of Apple
11 Inc. and participating subsidiaries in the United States." *See* Apple Employee Policies. Thus, these
12 uncompensated wait times and security screenings unlawfully deprive all Specialists in Apple's retail
13 stores throughout the country of proper compensation.

14 22. Apple has been aware for years that the uncompensated security screening policy is
15 improper and has willfully ignored repeated complaints from their employees who have questioned
16 why the required security checks and associated wait time are done off the clock and the legality of
17 such a practice. In an email sent to the Apple "Leadership Team" on November 5, 2012, one
18 employee writes:

19 I'm writing to ask for clarification of the tech checks policy. I understand that store
20 policy is to perform a personal technology check every time an employee leaves the
21 store. My concern is that since it's a work-related activity, tech checks shouldn't be
22 performed off the clock or while on break. There is an obvious issue here - the point
23 of the policy is to prevent employees from accidentally walking off with store
24 property, but we often have to wait for minutes at a time because of how busy the
store has become. If we are being paid for this (since it's a work requirement), it's not
a problem, but then we have to go in the back of the store (where there's inventory) to
clock out, which seems to negate the effectiveness of the whole policy.

25 Should we be off the clock when waiting for a tech check, or perform the tech check
26 on the floor, clock out in back, and then leave the store? Should our 15s start (if we
27 are leaving the store) before or after the tech check on the floor? Based on my
28 knowledge of cases like this with major retailers, I am trying to help Apple to avoid a
lawsuit by pointing out this potential problem.

23. Apple has not addressed and/or changed its uncompensated security screening procedures in response to these employee complaints or any other internal concerns regarding this policy and has continued to willfully deny employees out of millions of dollars in straight and overtime compensation. By bringing this lawsuit, Plaintiffs intend to finally stop this ongoing and unlawful practice and recover back wages and overtime to which they are rightfully entitled.

FAIR LABOR STANDARDS ACT COLLECTIVE ACTION ALLEGATIONS

24. The preceding paragraphs are incorporated by reference as if fully set forth herein.

25. Plaintiffs, Adam Kilker and Brandon Fisher, bring the FLSA collective claim described below on behalf of themselves and all other persons similarly situated pursuant to 29 U.S.C. §§ 207 and 216(b), specifically, on behalf of:

All Apple Hourly Employees who worked in an Apple, Inc. retail store in the United States, who are or were employed within the three years preceding the filing of this action by the Defendant, and who were: (a) not compensated for off-the-clock time spent waiting in security screening lines and undergoing personal package and bag searches before being allowed to leave the premises; and/or (b) were not fully compensated for this time worked over forty hours per week at overtime rates (the "FLSA Collective Class").

26. Excluded from the FLSA Collective Class are Defendant, its legal representatives, officers, directors, assigns, and successors, or any individual who has or had a controlling interest in Apple. Also excluded are persons and entities who submit timely and otherwise proper requests for exclusion from the FLSA Collective Class.

27. Plaintiffs are unable to state the exact number of class members without discovery of Defendant's books and records but estimate the class to exceed several thousand individuals.

28. Defendant improperly benefited from Plaintiffs' and the FLSA Collective Class members' uncompensated work while waiting in lengthy security check lines and undergoing personal package and bag searches. Defendant also failed to pay Plaintiffs and members of the FLSA Collective Class time-and-one-half their regular rate of pay for hours worked beyond forty hours in a workweek.

29. Defendant's unlawful conduct has been widespread, repeated and consistent. Moreover, Defendant's conduct was willful and in bad faith and has caused significant damages to

1 Plaintiffs and the FLSA Collective Class.

2 30. Defendant is liable under the FLSA for failing to properly compensate Plaintiffs and
 3 the FLSA Collective Class, and, as such, notice should be sent out to the FLSA Collective Class.
 4 There are numerous similarly situated, current and former employees of the Defendant who have been
 5 denied wages in violation of the FLSA who would benefit from the issuance of a Court-supervised
 6 notice of the present lawsuit and the opportunity to join in the action. Those similarly situated
 7 employees are known to Defendant and are readily identifiable through Defendant's records.

8 **MASSACHUSETTS STATE LAW CLASS ACTION ALLEGATIONS**

9 31. The preceding paragraphs are incorporated by reference as if fully set forth herein.

10 32. Plaintiff Adam Kilker brings the Massachusetts state claims described below under
 11 Mass. Gen. Laws Ch. 151, §§ 1A and 1B on behalf of himself and as a class action pursuant to Rule
 12 23 of the Federal Rules of Civil Procedure on behalf of a Class consisting of:

13 All Apple Hourly Employees who worked in an Apple, Inc. retail store in the State of
 14 Massachusetts, who are or were employed within the two years preceding the filing of
 15 this action by the Defendant, and who were: (a) not compensated for off-the-clock time
 16 spent waiting in security screening lines and undergoing personal package and bag
 searches before being allowed to leave the premises; and/or (b) were not fully
 compensated for this time worked over forty hours per week at overtime rates (the
 "Massachusetts Class").

17 33. Excluded from the Massachusetts Class are Defendant, its legal representatives,
 18 officers, directors, assigns, and successors, or any individual who has or had a controlling interest in
 19 Apple. Also excluded are persons and entities who submit timely and otherwise proper requests for
 20 exclusion from the Massachusetts Class.

21 34. Apple operates numerous facilities and employs thousands of Apple Hourly
 22 Employees in Massachusetts and systematically fails and refuses to pay them for all compensable
 23 hours worked. The members of the Massachusetts Class are so numerous that joinder of all members
 24 in one proceeding is impracticable.

25 35. Plaintiff's claims are typical of the claims of other Massachusetts Class members
 26 because Plaintiff was an hourly-wage, non-exempt employee who was not compensated for work
 27 performed at the employer's request while waiting in lengthy security check lines and undergoing
 28 personal package and bag searches. Plaintiff and other Massachusetts Class members have sustained

1 similar types of damages as a result of Defendant's failure to comply with Massachusetts state law.
 2 Plaintiff and other Massachusetts Class members have been injured in that they have been
 3 uncompensated or under-compensated due to Defendant's common policies, practices, and patterns of
 4 conduct.

5 36. Plaintiff will fairly and adequately protect the interests of the Massachusetts Class.
 6 Plaintiff has retained counsel competent and experienced in complex class action and wage and hour
 7 litigation. There is no conflict between the Plaintiff and the Massachusetts Class.

8 37. Common questions of law and fact exist as to the Massachusetts Class that
 9 predominate over any questions solely affecting them individually and include, but are not limited to,
 10 the following:

- 11 (a) Whether Defendant failed and/or refused to pay Plaintiffs and the
 12 Massachusetts Class for all of the compensable time that they worked for
 13 Defendant while waiting in lengthy security check lines and undergoing
 14 personal package and bag searches in violation of Mass. Gen. Laws Ch. 151,
 15 §§ 1A and 1B;
- 16 (b) Whether Defendant failed to keep true and accurate time records for all hours
 17 worked by their employees as required by Mass. Gen. Laws Ch. 151, § 15;
- 18 (c) Whether Defendant correctly compensated members of the Massachusetts
 19 Class for hours worked in excess of forty per workweek;
- 20 (d) Whether Defendant engaged in a pattern and/or practice in Massachusetts of
 21 forcing, coercing, and/or permitting Plaintiffs and Massachusetts Class
 22 members to perform work for Defendant's benefit which was not
 23 compensated;
- 24 (e) Whether Defendant's policy of failing to pay workers was instituted willfully
 25 or with reckless disregard of the law;
- 26 (f) The nature and extent of class-wide injury and the measure of damages for
 27 those injuries.

1 38. Class action treatment is superior to any alternatives for the fair and efficient
 2 adjudication of the controversy alleged herein. Such treatment will permit a large number of similarly
 3 situated persons to prosecute their common claims in a single forum simultaneously, efficiently and
 4 without the duplication of effort and expense that numerous individual actions would entail.
 5 Individual class members' damages are inadequate to justify the costs of prosecuting their claims in
 6 any manner other than a class action. No difficulties are likely to be encountered in the management
 7 of this class action that would preclude its maintenance as a class action, and no superior alternative
 8 exists for the fair and efficient adjudication of this controversy. Members of the Massachusetts Class
 9 are readily identifiable from Defendant's own records.

10 39. Prosecution of separate actions by individual members of the Massachusetts Class
 11 would create the risk of inconsistent or varying adjudications with respect to individual members of
 12 the Massachusetts Class that would establish incompatible standards of conduct for the Defendant.

13 40. Without a class action, Defendant will retain the benefit of its wrongdoing and will
 14 continue a course of action that will result in further damages to Plaintiffs and the Massachusetts
 15 Class.

16 OHIO CLASS ACTION ALLEGATIONS

17 41. The preceding paragraphs are incorporated by reference as if fully set forth herein.

18 42. Plaintiff, Brandon Fisher, brings the Ohio state claims described below on his own
 19 behalf and as a class action pursuant to Federal Rule 23 on behalf of a Class consisting of:

20 All Apple Hourly Employees who worked in an Apple, Inc. retail store in the State of
 21 Ohio, who are or were employed within the three years preceding the filing of this
 22 action by the Defendant, and who were: (a) not compensated for off-the-clock time
 23 spent waiting in security screening lines and undergoing personal package and bag
 searches before being allowed to leave the premises; and/or (b) were not fully
 compensated for this time worked over forty hours per week at overtime rates (the
 "Ohio Class").

24 43. Excluded from the Ohio Class are Defendant, its legal representatives, officers,
 25 directors, assigns, and successors, or any individual who has or had a controlling interest in Apple.
 26 Also excluded are persons and entities who submit timely and otherwise proper requests for exclusion
 27 from the Ohio Class.

28 44. Apple operates numerous facilities and employs thousands of Apple Hourly

1 Employees in the state of Ohio and systematically fails and refuses to pay them for all compensable
2 hours worked. The members of the Ohio Class are so numerous that joinder of all members in one
3 proceeding is impracticable.

4 45. Plaintiff's claims are typical of the claims of other Ohio Class members because they
5 were hourly-wage employees who were not compensated for work performed at the employer's
6 request while waiting in lengthy security check lines and undergoing personal package and bag
7 searches. Plaintiff and other Ohio Class members have sustained similar types of damages as a result
8 of Defendant's failure to comply with Ohio Revised Code §4111.03. Plaintiff and other Ohio Class
9 members have been injured in that they have been uncompensated or under-compensated due to
10 Defendant's common policies, practices, and patterns of conduct.

11 46. Plaintiff will fairly and adequately protect the interests of the Ohio Class. Plaintiff
12 has retained counsel competent and experienced in complex class action and wage and hour litigation.
13 There is no conflict between Plaintiff and the Ohio Class.

14 47. Common questions of law and fact exist as to the Ohio Class that predominate over
15 any questions solely affecting them individually and include, but are not limited to, the following:

- 16 (a) Whether Defendant failed and/or refused to pay Plaintiffs and the Ohio Class
17 for all of the compensable time that they worked for Defendant while waiting
18 in lengthy security check lines and undergoing personal package and bag
19 searches;
- 20 (b) Whether Defendant failed to keep true and accurate time records for all hours
21 worked by their employees;
- 22 (c) Whether Defendant correctly compensated members of the Ohio Class for
23 hours worked in excess of forty per workweek;
- 24 (d) Whether Defendant correctly compensated members of the Ohio Class for
25 hours worked under forty per workweek;
- 26 (e) Whether Defendant failed to comply with the posting and notice requirements
27 of the Ohio Revised Code;
- 28 (f) Whether Defendant engaged in a pattern and/or practice in Ohio of forcing,

coercing, and/or permitting Plaintiff and Ohio Class members to perform work for Defendant's benefit which was not compensated;

(g) Whether Defendant's policy of failing to pay workers was instituted willfully or with reckless disregard of the law; and

(h) The nature and extent of class-wide injury and the measure of damages for those injuries.

48. Class action treatment is superior to any alternatives for the fair and efficient adjudication of the controversy alleged herein. Such treatment will permit a large number of similarly situated persons to prosecute their common claims in a single forum simultaneously, efficiently and without the duplication of effort and expense that numerous individual actions would entail. Individual class members' damages are inadequate to justify the costs of prosecuting their claims in any manner other than a class action. No difficulties are likely to be encountered in the management of this class action that would preclude its maintenance as a class action, and no superior alternative exists for the fair and efficient adjudication of this controversy. Members of the Ohio Class are readily identifiable from Defendant's own records.

49. Prosecution of separate actions by individual members of the Ohio Class would create the risk of inconsistent or varying adjudications with respect to individual members of the Nevada that would establish incompatible standards of conduct for the Defendant.

50. Without a class action, Defendant will retain the benefit of its wrongdoing and will continue a course of action that will result in further damages to Plaintiffs and the Ohio Class

FIRST CLAIM FOR RELIEF

Violations of the Fair Labor Standards Act

(On Behalf of All Plaintiffs and the FLSA Collective Class)

51. The preceding paragraphs are incorporated by reference as if fully set forth herein.

52. At all relevant times, Defendant has been, and continues to be, an "employer" engaged in interstate commerce and/or in the production of goods for commerce, within the meaning of the FLSA, 29 U.S.C. § 203. At all relevant times, Defendant has employed and continues to employ, employees, including Plaintiffs and each of the members of the FLSA Collective Class.

53. Plaintiffs consent in writing to be a part of this action pursuant to FLSA, 29 U.S.C. § 216(b), and attached hereto as Exhibit A is a copy of Plaintiffs' Opt-in forms. As this case proceeds, it is likely that other individuals will sign consent forms and join as Plaintiffs.

54. The FLSA requires each covered employer such as the Defendant to compensate all non-exempt employees at a rate of not less than one and one-half times the regular rate of pay for work performed in excess of forty hours per workweek. The FLSA also requires each covered employer to pay the minimum wage for all hours worked.

55. Plaintiffs and the members of the FLSA Collective Action were and are entitled to be paid minimum wage and overtime compensation for all hours worked.

56. Defendant, pursuant to its policies and practices, failed and refused to pay minimum wage and overtime premiums to Plaintiffs and the members of the FLSA Collective Class for all of their hours worked in excess of 40 hours per week. Plaintiffs do not assert any claims for "Gap Time" (uncompensated work performed under 40 hours per week) under the FLSA.

57. By failing to compensate Plaintiffs and the members of the FLSA Collective Class for minimum wage and overtime compensation, Defendant has violated, and continues to violate, the FLSA, 29 U.S.C. § 201, *et seq.*

58. The foregoing conduct, as alleged, constitutes a willful violation of the FLSA, within the meaning of 29 U.S.C. § 255(a).

59. Plaintiffs, on behalf of themselves and the FLSA Collective Class, seek damages in the amount of their unpaid wages and overtime compensation, interest, and such other legal and equitable relief as the Court deems just and proper.

60. Plaintiffs, on behalf of themselves and the FLSA Collective Class, seek recovery of attorney's fees and costs, to be paid by the Defendant, as provided by the FLSA, 29 U.S.C. § 216(b).

SECOND CLAIM FOR RELIEF

Violations of the Massachusetts Overtime Law – Nonpayment of Overtime Wages (Mass. Gen. Laws Ch. 151 §§ 1A, 1B)

(On Behalf of Plaintiff Adam Kilker and the Massachusetts Class)

61. The preceding paragraphs are incorporated by reference as if fully set forth herein.

1 62. Plaintiff Adam Kilker and members of the Massachusetts Class were employees of
2 Apple, while Apple was the employer of Plaintiffs and members of the Massachusetts Class.

3 63. It is public policy and law in the Commonwealth of Massachusetts that "...no
4 employer in the commonwealth shall employ any of his employees...for a week longer than 40 hours,
5 unless such employee receives compensation for his employment in excess of 40 hours at a rate not
6 less than one and one-half times the regular rate at which he is employed..." (Mass. Gen. Laws Ch.
7 151, § 1A).

8 64. Mass. Gen. Laws Ch. 151, § 1B provides that employers who willfully or with
9 reckless indifference to the rights of their employees fail to pay the overtime wages required by Ch.
10 151, § 1A shall be liable in a civil action brought by an aggrieved employee for three times the unpaid
11 overtime wages owed by the employer.

12 65. During the class period, Defendant has violated Massachusetts law by failing to pay
13 Plaintiff and the Massachusetts Class, time and one-half their regular rate of pay for all hours worked
14 in excess of 40 hours worked within a workweek.

15 66. By its conduct as set forth herein, Defendant violated Mass. Gen. Laws Ch. 151, § 1A
16 by failing to pay Plaintiff and the Massachusetts Class time and one-half their regular rate of pay for
17 all hours worked in excess of 40 hours worked within a workweek.

18 67. Apple was not and is not permitted by state or federal law, or by order of a court of
19 competent jurisdiction, to withhold or divert any portion of the Plaintiff's and the Massachusetts
20 Class' unpaid minimum or overtime wages sought in this lawsuit.

21 68. Apple was not authorized by Plaintiff or any Massachusetts Class members to
22 withhold, divert or deduct any portion of their unpaid minimum or overtime wages sought in this
23 lawsuit.

24 69. Defendant's violations of Mass Gen. Laws Ch. 151, § 1A were repeated, willful and
25 intentional. Accordingly, Plaintiff and members of the Massachusetts class have been damaged by
26 these violations of Mass. Gen. Laws Ch. 151, § 1A.

27 70. Pursuant to Mass. Gen. Laws Ch. 151, § 1A and § 1B Defendant is liable to Plaintiff
28 and the members of the Massachusetts Class for three times their unpaid overtime compensation, plus

1 interest, liquidated damages, attorneys' fees, costs, and such other legal and equitable relief as the
2 Court deems just and proper.

3 **THIRD CLAIM FOR RELIEF**

4 **Violations of Ohio Revised Code §4111.03 – Nonpayment of Overtime Wages**

5 **(On Behalf of Plaintiff Brandon Fisher and the Ohio Class)**

6 71. The preceding paragraphs are incorporated by reference as if the same were fully set
7 forth herein.

8 72. Defendant is an "employer" within the meaning of Ohio Revised Code
9 §4111.03(D)(2).

10 73. Named Plaintiff Brandon Fisher and other members of the Ohio Class are
11 "employees" within the meaning of Ohio Revised Code §4111.03(D)(3).

12 74. By refusing to compensate hourly employees for waiting in security screening lines
13 and undergoing personal package and bag searches before being allowed to leave the premises,
14 Defendant has failed to pay Plaintiff and members of the Ohio Class overtime wages to which they are
15 entitled under Ohio Revised Code §4111.03.

16 75. Having violated Ohio Revised Code §4111.03, Defendant is liable to Plaintiff Brandon
17 Fisher and other members of the Ohio Class pursuant to Ohio Revised Code §4111.10 for the full
18 amount of the overtime wage rate, less any amount actually paid to the employees by Defendant, as
19 well as reasonable attorneys' fees, costs and interest as provided by law.

20
21 **PRAYER FOR RELIEF**

22 **WHEREFORE**, all Plaintiffs, individually and on behalf of the FLSA Collective Class, seek
23 the following relief:

24 A. Designation of this action as a collective action on behalf of the FLSA Collective
25 Class (asserting FLSA claims) and prompt issuance of notice pursuant to 29 U.S.C. §216(b) to all
26 similarly situated members, apprising them of the pendency of this action, and permitting them to
27 assert timely FLSA claims in this action by filing individual Plaintiff Consent Forms pursuant to 29
28

1 U.S.C. § 216(b);

2 B. Designation of Plaintiffs as the Representatives of the FLSA Collective Class;

3 C. Appointment of Plaintiffs' counsel as Lead Counsel for the FLSA Collective Class;

4 D. A declaratory judgment that the practices complained of herein are unlawful under the
5 FLSA, and injunctive relief requiring termination or modification of the unlawful practices challenged
6 in this Complaint, including Defendant's improper requirement that Apple Hourly Employees wait in
7 lengthy security check lines and undergo personal package and bag searches without compensation for
8 their time;

9
10 E. An award of damages, according to proof, including but not limited to unpaid
11 overtime wages and lost benefits, to be paid by the Defendant;

12 F. An award of costs incurred herein, including expert fees;

13 G. An award of attorneys' fees pursuant to 29 U.S.C. § 216;

14 H. An award of pre-judgment and post judgment interest, as provided by law; and

15 I. All such other relief as this Court shall deem just and proper.

16
17 **WHEREFORE**, Plaintiff Adam Kilker, individually and on behalf of the Massachusetts
18 Class, seeks the following relief:

19 A. Certification of this action as a class action pursuant to Federal Rule 23 and the
20 appointment of Plaintiff as the representative of the Massachusetts Class and Plaintiffs' counsel as
21 Lead Counsel for the Massachusetts Class;

22
23 B. An award to Plaintiff and members of the Massachusetts Class of damages for the
24 amount of unpaid minimum wages in addition to interest subject to proof;

25 C. An award to Plaintiff and members of the Massachusetts Class of damages for the
26 amount of unpaid overtime in addition to interest subject to proof;

27 D. An award to Plaintiff and the members of the Massachusetts Class of reasonable
28

1 attorneys' fees and costs pursuant to the Mass. Gen. Laws;

2 E. An award of pre- and post-judgment interest on all monetary relief prayed for above,
3 as may be permitted by law;

4 F. An award of costs of suit;

5 G. A declaratory judgment that the practices complained of herein are unlawful under
6 Mass. Gen. Laws, and injunctive relief requiring termination or modification of the unlawful practices
7 challenged in this Complaint, including Defendants' improper requirement that Apple Hourly
8 Employees wait in lengthy security check lines and undergo personal package and bag searches
9 without compensation for their time;

10 H. All such other relief as this Court shall deem just and proper.

11
12 **WHEREFORE**, Plaintiff Brandon Fisher, individually and on behalf of the Ohio Class, seeks
13 the following relief:

14 A. Certification of this action as a class action pursuant to Federal Rule 23 and the
15 appointment of Plaintiff as the representative of the Ohio Class and Plaintiffs' counsel as Lead
16 Counsel for the Ohio Class;

17 B. An award to Plaintiff and members of the Ohio Class of damages for the amount of
18 unpaid minimum wages in addition to interest subject to proof;

19 C. An award to Plaintiff and members of the Ohio Class of damages for the amount of
20 unpaid overtime in addition to interest subject to proof;

21 D. An award to Plaintiff and the members of the Ohio Class of reasonable attorneys' fees
22 and costs pursuant to the Ohio Revised Code;

23 E. An award of pre- and post-judgment interest on all monetary relief prayed for above,
24 as may be permitted by law;

25 F. An award of costs of suit;

1 G. A declaratory judgment that the practices complained of herein are unlawful under
2 Ohio Revised Code, and injunctive relief requiring termination or modification of the unlawful
3 practices challenged in this Complaint, including Defendants' improper requirement that Apple
4 Hourly Employees wait in lengthy security check lines and undergo personal package and bag
5 searches without compensation for their time;

6
7 H. All such other relief as this Court shall deem just and proper.

8 **DEMAND FOR JURY TRIAL**

9 Pursuant to Federal Rule of Civil Procedure 38(b), Plaintiffs demand a trial by jury of
10 all issues so triable.

11 DATED: August 14, 2013

12 By:


Kimberly A. Kralowec

13 Kimberly A. Kralowec (Cal. Bar No. 163158)
14 THE KRALOWEC LAW GROUP
15 188 The Embarcadero, Suite 800
16 San Francisco, California 94105
17 Telephone: (415) 546-6800
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19 *kkralowec@kralowecclaw.com*

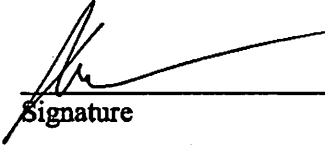
20 Lee S. Shalov
21 Brett Gallaway
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23 260 Madison Avenue
24 New York, NY 10016
25 Telephone: (212) 448-1100
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27 *lshalov@mclaughlinstern.com*
28 *bgallaway@mclaughlinstern.com*

Louis Ginsberg
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1613 Northern Blvd.
Roslyn, NY 11576
Telephone: (516) 625-0105
lg@louisginsberglawoffices.com

Attorneys for Plaintiffs and the Putative Classes

Ex A

I consent to be a party plaintiff in a lawsuit against Apple Inc. and/or related entities in order to seek redress for violations of the Fair Labor Standards Act, pursuant to 29 U.S.C. § 216(b). I hereby designate The Law Firm of Louis Ginsberg, P.C., McLaughlin & Stern, LLP, and The Kralowec Law Group to represent me in such a lawsuit.

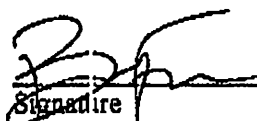
 7/31/13
Signature Dated

Adam Lee Kilker
Full Legal Name (print)

REDACTED
Address

REDACTED
City, State Zip Code

I consent to be a party plaintiff in a lawsuit against Apple Inc. and/or related entities ("Apple") in order to seek redress for violations of the Fair Labor Standards Act, pursuant to 29 U.S.C. § 216(b). I am/was employed by Apple from ~~March 7, 2010~~ ^{March 7, 2010} to June 24, 2012 and was denied wages and other compensation by virtue of the practices described in Plaintiffs' Complaint. I hereby designate The Law Firm of Louis Ginsberg, P.C., McLaughlin & Stern, LLP, and The Kralowec Law Group to represent me in such a lawsuit.

 8/7/13
Signature Dated

Brandon Fisker
Full Legal Name (print)

REDACTED _____
Address

REDACTED
City, State Zip Code

JS 44 (Rev. 12/12) and rev (1/15/13)

CIVIL COVER SHEET

This JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

I. (a) PLAINTIFFS

Adam Kilker and Brandon Fisher, on behalf of themselves and all others similarly situated

(b) County of Residence of First Listed Plaintiff Worcester County, MA
(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorneys (Firm Name, Address, and Telephone Number)

see attachment

DEFENDANTS

Apple Inc., a California corporation

County of Residence of First Listed Defendant LB
(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.

Attorneys (If Known)

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- ☐ 1 U.S. Government Plaintiff
- ☒ 3 Federal Question (U.S. Government Not a Party)
- ☐ 2 U.S. Government Defendant
- ☐ 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- | | PTF | DEF | | PTF | DEF |
|---|----------------------------|----------------------------|---|----------------------------|----------------------------|
| Citizen of This State | <input type="checkbox"/> 1 | <input type="checkbox"/> 1 | Incorporated or Principal Place of Business In This State | <input type="checkbox"/> 4 | <input type="checkbox"/> 4 |
| Citizen of Another State | <input type="checkbox"/> 2 | <input type="checkbox"/> 2 | Incorporated and Principal Place of Business In Another State | <input type="checkbox"/> 5 | <input type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3 | <input type="checkbox"/> 3 | Foreign Nation | <input type="checkbox"/> 6 | <input type="checkbox"/> 6 |

IV. NATURE OF SUIT (Place an "X" in One Box Only)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES	
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excludes Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury <input type="checkbox"/> 362 Personal Injury - Medical Malpractice	PERSONAL INJURY <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 367 Health Care/Pharmaceutical Personal Injury Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 690 Other LABOR <input checked="" type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Management Relations <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 751 Family and Medical Leave Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Employee Retirement Income Security Act IMMIGRATION <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 465 Other Immigration Actions	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark SOCIAL SECURITY <input type="checkbox"/> 861 HIA (1395f) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	<input type="checkbox"/> 375 False Claims Act <input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 896 Arbitration <input type="checkbox"/> 899 Administrative Procedure Act/Review or Appeal of Agency Decision <input type="checkbox"/> 950 Constitutionality of State Statutes
REAL PROPERTY <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	CIVIL RIGHTS <input type="checkbox"/> 440 Other Civil Rights <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 448 Education	PRISONER PETITIONS Habeas Corpus: <input type="checkbox"/> 463 Alien Detainee <input type="checkbox"/> 510 Motions to Vacate Sentence <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty Other: <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition <input type="checkbox"/> 560 Civil Detainee - Conditions of Confinement			

V. ORIGIN (Place an "X" in One Box Only)

- ☒ 1 Original Proceeding
- ☐ 2 Removed from State Court
- ☐ 3 Remanded from Appellate Court
- ☐ 4 Reinstated or Reopened
- ☐ 5 Transferred from Another District (specify)
- ☐ 6 Multidistrict Litigation

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):
29 U.S.C. §216(b)

Brief description of cause:

Class action alleging underpayment of wages and overtime compensation

VII. REQUESTED IN COMPLAINT:

☒ CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P.

DEMAND \$

> \$5,000,000

CHECK YES only if demanded in complaint:

JURY DEMAND:

☒ Yes ☐ No

VIII. RELATED CASE(S) IF ANY

(See instructions):

JUDGE Elizabeth D. LaporteDOCKET NUMBER 3:13-cv-03451-EDLDATE
08/14/2013

SIGNATURE OF ATTORNEY OF RECORD

IX. DIVISIONAL ASSIGNMENT (Civil L.R. 3-2)

(Place an "X" in One Box Only)



SAN FRANCISCO/OAKLAND



SAN JOSE



EUREKA

Kilker, et al. v. Apple Inc.

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Brett Gallaway (*pro hac vice* application to be filed)
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Attorneys for Plaintiffs